IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4929 of 2004

1.The State of Maharashtra)
through the Secretary,)
Agericulture, Animal Husbandary)
Dairy Development & Fisheries)
Department, Mantralaya,)
Mumbai-400 032.)
2.The Commissioner, Dairy)
Development, Mumbai-20.)
3.The Regiional Dairy Develop-)
-ment Officer, Regional Office)
4.The General Manager, Govt.)
Milk Scheme,Pune-411003)..PETITIONERS

Versus

1.Kishor Narayan Talathi)
2.Shankar Homa Pardeshi)
3.Kondiba Pandurang Bhalerao)
4.Narsingh Gangaprasad Pardeshi)
5.Madhukar Shivappa Burad)
6.Pandurang Baburao Sable)
7.Bhagwan Sopan Mali)
8.Bajirao Dhondiram Bansode)
9.Vilas Krishna Javir)
10.Ashok Janardan Panchwagh)
11.Nazir Izmile Tamboli)
Deceased through his heirs)

and legal representatives:-)

11A.Smt. Noorbano Nazir Tamboli)

11B.Kumari Reshama Nazir Tamboli)

11C.Smt.Aasama Mahboob Tamboli)

11D.Shri Nadeem Nazir Tamboli)

11E.Shri Naeem Nazir Tamboli)

12.M.K. Pawar)

13.Baldeosingh Jaysingh Kakore)

14.Angad Bhagawan Gaikwad)

15.Vitthal Dulaji Lohokare)

16.Praveen Ranjeet Wani)

17.Allauddin Hapijoddin Sayyed)

18.Late Shri Sumant Ramchandra)

Kharade (Deceased through)

his heirs and legal)

representatives:)

18A.Smt. Vimal Sumant Kharade)

18B.Shri Suhas Sumant Kharade)

18C.Smt.Savita Pradeep Gaikwad)

18D.Smt.Shubhada Sanjay Kamathe)

19.Sambhaji Krishna Tonde)

20.Sudhakar Kondiba Tajne)

21.Gulab Arjun Wagh)

22.Shyam Pandurang Kadam)

23.Shashikatn Laxman Tokekar)

24.Vitthal Nathuji Kolhe)

25.Namdeo Pandurang Dhule)

26.Vilas Mahalu Nikam)

27.Ganpat Shankar Salunkhe)

28.N.M. Chandane)

29.Vijay Rupaji Ghode,)

30.Late Shri Umakant Moreshwar)

Beke,)

Deceased through his heirs)

and legal representatives:)

30A.Smt. Padmavati Umakant Beke)

30B.Shri Dhananjay Umakant Beke)

30C.Shri Manved Umakant Beke)

31.Bhaskar Kashinath Garatkar)..RESPONDENTS

Mr. A.P. Vanarase, AGP for Petitioners

Mr. S.P. Saxena, for Respondent Nos. 1 to 4.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.

DATED : 11th February, 2005

ORAL JUDGMENT (PER F.I. REBELLO, J.)

. Rule. Heard forthwith.

2. The respondents herein are in the service of the petitioners and before their promotion to the post of Circle Inspector were holding the post in the feeder cadre of Milk Procurement Supervisor/Milk Distributor Supervisor/Milk Dispatcher. Initially for promotion to the post of Circle Inspector in terms of the recruitment Rules of 1963, to be eligible one of the requirements was of being a Graduate with 3 years experience. These Rules came to be amended and the requirement of qualification for promotion was deleted by Government Resolution dated 9th August, 1973. Consequent

to that the Respondents by order dated 24th August, 1982 came to be promoted as Circle Inspectors in the pay scale of Rs.335-680/- under Government Milk Scheme, Pune.

3. Prior to 1st January, 1986 the pay scale for the post of Milk Procurement Supervisor, Milk Distribution Supervisor, Milk Dispatcher and Bottle Checker was Rs.260-495/-. As against this Circle Inspector was carrying pay scale of Rs.335-600/-. On implementation of the recommendations of the 4th Pay Commission with effect from 1st January, 1986 the pay scale of Circle Inspector was revised to Rs.1320-2040/-. The 5th Pay Commission recommendations were made effective from 1st January, 1996. The pay scale of Circle Inspector was revised to Rs.4000-6000/-.

. The feeder posts like Milk Distribution Supervisor, Milk Procurement Supervisor, Milk Dispatcher and Bottle Checker were revised to Rs.975-1540/- by the 5th Pay Commission recommendation.

. In so far as the Milk Procurement Supervisor is concerned under 4th Pay Commission recommendation scale provided was Rs.1200-1800/-. Correspondingly the pay scale of Rs.1200-1800/- was revised to Rs.4000-6000/-. By Government Resolution dated 7th November, 1998 while maintaining the scale of Rs.1200-1800/- for the post of Milk Procurement Supervisor, by Government Resolution introduced for the first time a higher pay scale of Rs.1350-2200/- applicable to those Milk Procurement Supervisors who had put

in 7 years of qualified service. This revised pay scale in terms of 5th Pay Commission was revised to Rs.4,500-7000/-. The Milk Procurement/Milk Collection Supervisors who were promoted earlier to the post of Circle Inspectors on the basis of seniority-cum-merit were placed in the pay scale of Rs.1320-2040/- whereas those Milk Procurement Supervisors who were not yet promoted, but had completed 7 years qualified service were placed in the pay scale of Rs.1350-2200/-. The Applicants before the Tribunal, therefore, made representations to the petitioners pointing out the said anomaly in the pay structure and demanded revision of their pay scale to that of Rs.1400-2600 with effect from 1st January, 1986. This was not considered.

5. On failure to consider their representation and considering that their juniors were drawing higher pay scale the respondents filed Original Application. The learned Tribunal considered the qualification required for the purpose of appointment in the post of Circle Inspector and the qualification for appointment to the post amongst others of Milk Procurement Supervisor. The Tribunal found that Milk Procurement Supervisors who had been promoted to the post of circle Inspectors much earlier were placed in the pay scale of Rs.4000/--6000/- whereas Milk Procurement Supervisors who were not promoted, but had completed 7 years qualified service were placed in the scale of Rs.4200-7500/-. The Applicants before it had claimed the pay scale of Rs.5500-9000, that being the next higher scale to 4500-7000, since according to them the post of Circle Inspector still remains a promotional post for Milk

Procurement Supervisors. The Tribunal found that after the recruitment of 1990 there has been a change in the mode of recruitment to the post of Milk Procurement Supervisors and Milk Distribution Supervisors and special qualification of Diploma course in Dairy/Agriculture are required for appointment to the said post. It further recorded a finding that it cannot be said that Milk Procurement Supervisors still remain as feeder cadre for promotion to the posts of Circle Officer. The Tribunal further recorded a finding that the Applicants before them could not have drawn lesser salary than the Milk Procurement Supervisors who had been appointed much after them and directed that the pay scale of Rs.4,500-7000 be also made applicable to the Applicants considering that they have completed 7 years service when they were working in the post of Milk Procurement Supervisors. It is this order which is the subject matter of the present petition.

6. The petitioners have impugned the said order of the Tribunal. The main contention as set out in the petition is that after the recruitment Rules of 1990 the recruitment to the post of Milk Procurement Supervisors and Milk Distribution Supervisors required special qualification of Diploma course in Diary/Agriculture and considering that it cannot be said that the post of Milk Procurement Supervisors still remain as feeder cadre for promotion to the post of Circle Officers. It is submitted that unless and until proper recruitment rules are framed the pay scales could not have been granted. We really find no merit in the said contention. The pay scales of employees are based on the

recommendations of the Pay Commissions. In the instant case when the respondents were promoted the post of Circle Inspector was a promotional post for feeder post amongst others of Milk Procurement Supervisors. Once that be the case, the feeder post could not have been granted higher time scale than the promotional post. All that the Tribunal has done is to remove the anomaly occasioned by promotion of Milk Procurement Supervisors by the order of 1982. We really do not find that the order suffers from any error apparent on the face of the record and/or otherwise is inequitable.

7. In the light of that there is no merit in this petition, which is accordingly dismissed.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)